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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,170	02/22/2002	Yoshihiro Kawaoka	800.029US1	8446

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EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
1645	

DATE MAILED: 09/10/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.  
10/081,170

Applicant(s)

Kawawoka

Examiner

S. Devi, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jun 11, 2003

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4)  Claim(s) 1-31 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 1-31 are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6)  Other: \_\_\_\_\_

**Restriction/Election**

- 1) Claims 1-31 are under prosecution.
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 3) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11, drawn to a mutant cell, classified in class 435, subclass 339
  - II. Claims 12-21, drawn to a method of isolating a cell by contacting it with lectin or agglutinin, classified in class 435, subclass 440
  - III. Claims 22-24, drawn to a lectin resistant cell, classified in class 435, subclass 325
  - IV. Claims 25 and 26, drawn to a method of propagating influenza virus using a mutant cell and the progeny virus made, classified in class 435, subclass 235.1
  - V. Claims 25 and 26, drawn to a method of propagating influenza virus using a resistant cell and the progeny virus made, classified in class 435, subclass 235.1
  - VI. Claims 27-31, drawn to a method of using a mutant cell to isolate an adapted virus and the adapted virus obtained, classified in class 435, subclass 948
  - VII. Claims 27-31, drawn to a method of using a resistant cell to isolate an adapted virus and the adapted virus obtained, classified in class 435, subclass 308.1
- 4) Inventions I-VII are distinct from one another. Inventions I and III and parts of inventions IV-VII are drawn to two distinct products: a mutant cell; a resistant cell; and viruses which differ from one another structurally and functionally/biologically. Invention II and parts of inventions IV-VII are drawn to two distinct methods, which differ from one another in method steps/parameters, reagents or compositions used, and/or ultimate goals accomplished.
- 5) Inventions I, IV and VI as well as inventions III, V and VII respectively are related as

products and processes of using the products. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the mutant or resistant cell of inventions I and III can be used in a materially different process, for example, as a source of coating antigenic reagent in an *in vitro* immunological assay to detect sialic acid-specific antibodies.

Because these inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, restriction for examination purposes as indicated is proper.

6) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R 1.143).

7) Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(h).

8) Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

September, 2003

*SD*  
S. DEVI, PH.D.  
PRIMARY EXAMINER